



ISO Agent Sales Agreement

This Sales Agent Agreement (the “**Agreement**”) is made and effective as of this date _____ 2019 by and between Sutton Funding NY Inc. (Hereinafter “**SF**”) and _____ (Agent) with Offices at _____.

WHEREAS, SF purchases and out sources the purchase from merchants (“**Merchants**”) a percentage of each future credit card, debit card, bank card and/or other banking deposits, checks, electronic deposits (collectively, “**credit card**”) receipts (“**Receipts**”) due to the Merchants for an amount agreed to by SF and the Merchants (“**Program**”);

WHEREAS, the Program permits Merchants to sell an agreed upon portion of their future Receipts at a discount (“**Preprocessing Receipts**”);

WHEREAS, Agent wishes to promote the Program, assist with its implementation and refer potential Merchants to SF that may wish to participate in the Program, all subject to the terms hereof.

NOW, THEREFORE this Agreement witnesses that in consideration of the mutual covenants by each of the parties hereto, the parties agree as follows:

- 1. Agent Obligations.** Agent will market and promote (on a non-exclusive) Program and assist interested parties in completing and submitting to SF an application, in a form acceptable to SF. Each merchant assisted by Agent shall; (i) comply in full with the requirements set forth in the rules and policies of SF as they may exist from time to time. SF will evaluate and, at its sole discretion, accept or deny such applications. Agent shall not be the only or exclusive sales agent of the Program for SF. SF may, at its sole discretion, retain the services of other sales Agents.
- 2. Agent Compensation.** In consideration for the services rendered by the Agent hereunder, SF agrees to pay Agent in accordance with the Agent Compensation Schedule, set out in **Schedule A** hereto (the “**Compensation**”). Compensation shall be paid in respect of each Merchant location referred to SF by Agent only, and which Merchant has entered into a Merchant Agreement in a form prescribed by SF (“**Merchant Agreement**”) as a direct result of the referral by Agent. Payment shall be due seven (7) business days following receipt by SF or written acknowledgement of the Merchant’s receipt of its Preprocessing Receipts, pursuant to **Schedule A** hereto. If a Merchant ceases procuring services from a SF-designated credit card processor, or blocks our ACH debits (Banking Program). Ongoing Compensation, as defined in **Schedule A**, shall terminate in respect of that Merchant. In the event that a Merchant terminates or is in default of its obligations under a Merchant Agreement, no Ongoing Compensation shall be paid in respect of such Merchant. Payment of all Compensation to Agent shall continue and survive termination of this Agreement, except in case of a breach of this Agreement by Agent.
- 3. Merchant Application and Agreement.** SF only shall be authorized to accept, ratify or finalize any Merchant Agreement and include a Merchant in the Program SF may, at its sole and absolute discretion decline to accept any Merchant to the Program for any reason whatsoever. Under no circumstances shall Agent hold out that it has any right to accept or decline a Merchant application for a Merchant Agreement nor shall it hold out or represent to any third party that it has the right to: (a) modify in any way or accept any Merchant Agreement; (b) include a Merchant in the Program; or (c) bind SF legally or otherwise. No agreement made by or through Agent or its affiliates shall be legally or otherwise binding on SF until accepted in writing by a duly authorized officer of SF. Agent shall be solely responsible for any and all expenses incurred by Agent in performance of services hereunder including, but not limited to, expenses related to any Agent employees or consultants. Agent acknowledges and agrees that SF may, at its sole discretion, amend the terms of the Program, including, without limitation the pricing thereof without prior notice or consent from Agent. SF can at its sole discretion and without remuneration directly contact any Merchant it has funded and offer any of its programs/services. SF can at its sole discretion and without remuneration contact any and all Merchant’s and offer any program after two weeks from submission date.
- 4. Agent Identification.** In the course of carrying out its obligations hereunder, Agent shall clearly identify itself with its own corporate name, but also disclosing to all third parties that it is an agent of SF for the promotion of the Program. Agent agrees that its actions and the actions of its shareholders, Affiliates (as defined below), directors officers, employees, independent contractors, representatives, agents, principals and associates under or in connection with this Agreement (collectively “**Agent Parties**”) shall be governed, controlled and directed by, and shall be in full compliance with, the terms hereof and shall at all times and in respect of all parties and third parties be construed as actions taken by Agent subject to the terms hereof. Agent shall be responsible to ensure that all Agent Parties are adequately trained to perform hereunder and conform to all of the provisions hereof. Agent covenants that Agent Parties shall abide by the obligations of the Agent set out in **Schedule A** hereto



5. Representation and Warranties. Each party hereto represents and warrants to and for the benefit of the other party that as of the date hereof and during the term hereof:

A. It is a corporation or limited liability company organized, validly existing and in good standing under the laws of the State where its principal office located;

B. It has full authority and corporate power to enter into this Agreement and to perform its obligations under this Agreement.

C. It's performance of this Agreement will not violate any applicable law or regulation or any agreement to which it may now be bound;

D. This Agreement represents its valid obligation and is fully enforceable against it;

E. It is not a party to any pending litigation that would have an impact on this Agreement and have never been fined or penalized by Visa, MasterCard, NACHA or any other association in the credit, payments or banking industry; and

F. It is not on the Member Alert to Control High-Risk merchants list of MasterCard or any other similar list. Broker fees are not authorized on any merchant for any reason except for fees otherwise set forth herein or attached on Schedule A.

An agent covenant that during the term hereof and so long as it is bound by the non-interference provisions hereof, it shall:

A. Comply with any and all policies and guidelines established by SF.

B. Where appropriate, inform potential Merchants that they are required to change credit card processors in order to participate in the Program;

C. Accurately describe the Program;

D. Immediately inform SF of any changes that become known to Agent in the address, ownership or business or operations of itself or of any Merchant;

E. Deliver to SF all documents required as part of a Merchant Application together with each application, including, without limitation: Merchant Agreement, Application Form, voided Merchant check, Merchant statements, and any other documents required according to SF guidelines, such as they may be from time to time;

F. Remain cognizant and in agreement that this Agreement may be terminated immediately by SF upon breach of any obligation, covenant, representation or warranty set forth in this Agreement or if determined by SF, in its sole discretion that Agent is causing a negative effect on the Program, SF or its affiliates;

G. Not cause or solicit a successfully referred Merchant to terminate or alter its credit card processing to another bank or processor, which has no contractual affiliation with SF or any of its affiliates; as long as such merchant has a balance owed to SF.

6. Term and Termination. The term of this Agreement shall begin on the date appearing on the first page hereof and will continue for an initial term of one (1) year. After such initial term, this Agreement shall automatically renew for successive one (1) year terms unless terminated by either party upon ninety (90) days written notice prior to the end of the then current term. This Agreement may be terminated immediately by SF upon breach by Agent of any of its obligations herein or if, as determined by SF, Agent or any of Agent Parties causes a detrimental effect to the Program, SF or any of its affiliates, other programs, officers, employees or Merchants.

7. Non-Interference. During the term of this agreement, Agent and Agent Parties shall not themselves or permit any respective subsidiary, Affiliate or successor in interest of their respective officers, employees, agents or nominees; (i) to interfere, in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with SF contractual relationship with any of its merchants successfully referred to SF by agent or clients; (ii) to cause or attempt to cause any Merchant or other SF client to terminate its relationship with SF or utilize the services of any entity other than SF. For the purposes of this Agreement the term "**Affiliate**" or "**affiliate**" shall mean, with respect to a specified party, any party that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified party.

8. Non-Solicitation. The parties agree that throughout the term of this Agreement and for none of Agent Parties, nor any of their respective affiliates shall hire any of the current officers or employees or agents of the other party hereto or any of its Affiliates who have established contact as a result of this agreement. So long as such restricted employee or agent remains employed or retained by such party or its Affiliates, without the prior written consent of such party.

9. Remedies. Without limiting the foregoing, in the event of a breach of Section 1,3,4,5,6 or 7 of this Agreement by Agent or any Agent Party, SF shall be entitled to apply to a court of competent jurisdiction for an injunction to restrain such breach, without the need for bond, and SF shall have no obligation to make any further Compensation or other payment to Agent that might otherwise come due after such breach; provided that Agent does not cure the breach within 10 calendar days after notice thereof. Any remedies hereunder shall be in addition to any other remedies available to SF in law or in equity.



10. **Assignment; Successors; Amendments.** This Agreement shall inure to the successors and permitted assigns of the parties hereto. With the exception of amendments to the Program and Compensation, which may be made at the discretion of SF, this Agreement may be amended only by a written agreement executed by both parties hereto.

11. **Confidential Information.** Each party acknowledges that it may directly or indirectly disclose Confidential Information to the other party in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. Each party agrees to treat such Confidential Information with the same degree of care and security as it treats its most confidential information. Each party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement. Except as otherwise contemplated by this Agreement, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall survive any termination of the Agreement.

“**Confidential Information**” means all proprietary, secret or confidential information or data relating to either party and its affiliates, operations, employees, products or services, clients, customers or potential customers. Confidential Information shall include customer lists, card member account numbers, pricing information, computer access codes, instruction and/or procedural manuals, and the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is: (i) already known to the receiving party free of any restriction at the time it is obtained; (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) or becomes publicly available through no wrongful act of the receiving party; (iv) independently developed by the receiving party without reference to any Confidential Information of the other; or (v) required to be disclosed by law.

12. **Notices.** Unless otherwise specified herein, any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally or sent by internationally recognized overnight courier, registered or certified mail (postage prepaid with return receipt requested) to the address of SF or Agent set forth below. Such notices or other communications shall be deemed received (i) on the date delivered, if delivered personally, (ii) on the business day after being sent by an internationally recognized overnight air courier or (iii) five days after being sent, if sent by first class registered mail, return receipt requested.

If to Agent:

Name:

Address:

City/ State/ Zip:

Phone/ Fax / E-mail:

If to SF Sutton Funding NY Inc.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its principles of conflicts of laws) whose courts shall have sole jurisdiction over disputes arising hereunder. The parties hereto agree that issues arising hereunder are too complex to be addressed by a jury and covenant to elect for a non-jury trial in the event of a trial relating hereto. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs, including expert witness fees and fees on any appeal.

14. **Whole Agreement.** This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written by any officer, partner, employee or representative of any party hereto. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, shall be effective unless assented to in writing by both parties. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer any rights or remedies upon any persons or entities not parties to this Agreement.



15. **Relationship of Parties.** SF and Agent are independent contractors hereunder and their relationship shall not be construed as any other form of employer/employee relationship, joint venture or partnership. SF intends no contract of employment, express or implied, with either Agent or any Agent Party; neither Agent nor any Agent Party has obtained any right to employment or compensation as an employee or any other benefits of an employee by way of this Agreement. Agent agrees that it shall be solely responsible for the purchase and maintenance of employment or workers compensation insurance coverage related to its employees and that SF shall have no responsibility for any such liabilities.

16. **Limitation of Liability.** SF shall not be liable hereunder to Agent or any third party for any liquidated, indirect, consequential, exemplary or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of this Agreement even if the party at fault has been advised of the possibility of such damages.

17. **Severability.** If any provision hereof is for any reason determined to be invalid, such provision shall be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the parties as herein expressed, and such invalidity shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

SF – Signature

Agent (ISO) Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____



Schedule A

Agent Compensation

This Agent Compensation Schedule sets out the terms of payment of Compensation under the Agreement (the “**Agreement**”). In the event of any discrepancy

between the terms of this Schedule and the Agreement, the Agreement shall prevail. Agents may be paid Compensation in Four forms: a One-Time Lump Sum Compensation, Ongoing Compensation, a One Time Renewal Compensation and processing residual commission as detailed below. Compensation is subject to change when changes are made by SF to the Program. Changes to the program may be made in SF sole discretion, with notice in writing.

Agent shall be paid its **One-Time Lump Sum Compensation** in respect of a Merchant within 7 business days after the purchase price for the purchased amount is paid by SF to the Merchant (provided the Merchant is still processing with one of SF approved processors and is forwarding SF all amounts due). In the event that a cash advance to a merchant is made at a factor rate lower than the approved factor rate, the One Time Lump Sum Compensation paid to the Agent shall be reduced by one-half of one percent for each point reduction in the Factor Rate and provided that in no event can a Factor Rate be lower than 1.170.

If a Merchant referred by Independent Sales Organization defaults under its Merchant Agreement within the first 30 calendar days after funding, the Independent Sales Organization shall immediately return to SF the One-Time Lump Sum Compensation (as defined in Schedule A) paid to Independent Sales Organization with respect to such Merchant (and, if Independent Sales Organization fails to do so, then without limiting Independent Sales Organizations obligation to represent such amounts or any other rights of SF, SF may set off the amount of such One-Time Lump Sum Compensation against other amounts due to Independent Sales Organization hereunder or any other agreement). In the event that a Merchant terminates or is in default of its obligations under a Merchant Agreement, no Ongoing Compensation shall be paid in respect of such Merchant.

Ongoing Compensation in respect of a Merchant shall be paid no more than twenty (20) business days following the end of any month in which SF receives Processing Receipts.

All compensation is based on the funded amount of the cash advance AND IS DETERMINED BY THE BUY RATE FROM SF.

New Deal Max 10%

Renewal Max 10%

Schedule B

Agent Contact Info

1. Full Name:

2. Date of Birth:

3. Social Security Number:

4. Home Address:

5. Phone Number(s):

6. Email Address(es):
